

MICHIGAN CODE OF MILITARY JUSTICE OF 1980 (EXCERPT)
Act 523 of 1980

ARTICLE 1

32.1001 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan code of military justice of 1980".

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1002 Definitions.

Sec. 2. As used in this act:

(a) "Accuser" means a person who signs and swears to charges, a person who directs that charges be signed and sworn to by another, or a person who has an interest other than an official interest in the prosecution of the accused.

(b) "Active service" means service, active state service, or special duty required by law, regulation, or order of the governor. Active service includes the continuing obligations of active members of the national guard and the defense force by virtue of their commissions, appointments, or enlistments.

(c) "Active state duty" means the actual weekend, annual training, or special call up duty in the state military forces and includes travel to and from the duty site or station.

(d) "Active state service" means military service in support of civil authorities ordered by the governor or as provided by the Michigan military act.

(e) "Apprehension" means the taking of a person into custody.

(f) "Commanding officer" includes only a commissioned officer.

(g) "Confinement" means the physical restraint of a person.

(h) "Controlled substance" means opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, marihuana, any compound or derivative of any such substance, and any other substance that is listed in schedules I through V of section 202 of the controlled substances act, 21 USC 812, including any subsequent amendments thereto.

(i) "Correctional custody" means the physical restraint of a person during duty or nonduty while on active state duty and includes extra duty, fatigue duty, or hard labor.

(j) "Enlisted member" means a person in an enlisted grade.

(k) "Federal service" means military duty in the armed forces of the United States, including, without limitation, the army national guard of the United States and the air national guard of the United States, while subject to the uniform code of military justice, 10 USC, 801 to 946.

(l) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or rule.

(m) "Judge advocate" means an officer who is designated as a judge advocate by the state judge advocate general.

(n) "Military" includes each armed force of the United States and each component of the state military establishment.

(o) "Military court" means a court-martial, a court of inquiry, or the military appeals tribunal.

(p) "Military judge" means a judge advocate designated as a military judge by the state judge advocate general or an official of a general or special court-martial appointed pursuant to section 26.

(q) "Minor offense" means an offense under a punitive section of this act that a commanding officer considers minor.

(r) "Officer" means a commissioned or warrant officer.

(s) "Staff judge advocate" means the commissioned officer responsible for supervising the administration of military justice within a command.

(t) "State judge advocate general" means the commissioned officer responsible for supervising the administration of the military justice in the state military forces.

(u) "State military forces" means the national guard of the state, as defined in 32 USC 101(3), and any other military force organized under the laws of the state.

(v) "Summary court officer" means an official appointed pursuant to section 16(c) who is authorized to serve warrants.

(w) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(x) "Unit" means a regularly organized body of the military that is not larger than a company or squadron.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1003 Applicability; convening and holding courts-martial and courts of inquiry out of state; offenses committed out of state; trial and punishment.

Sec. 3. (1) This code applies to all members of the state military forces when not in federal service, and to all other persons lawfully called, ordered, drafted, transferred or inducted into, or ordered to duty in or with the state military forces, from the date they are required by the terms of the call, order, or other directive. Persons subject to this code shall include all persons serving in the state military forces pursuant to title 32 of the United States Code and all persons of the state military forces in active service.

(2) This code applies to a person subject to this code while serving out of state and while going to and returning from the service out of state to the same extent as a person serving within the state.

(3) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while serving out of state with the same jurisdiction and powers as if held within the state. Offenses committed out of state may be tried and punished either out of state or within the state.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1004 Relieving person from trial by court-martial; limitation; trial by court-martial of person charged with fraudulently obtaining discharge; effect of conviction.

Sec. 4. (1) Subject to the limitation of actions under section 43, a person who is subject to this code and charged with an offense under this code is not relieved from a trial by court-martial because his or her military service is terminated.

(2) Each person discharged from the state military forces who is later charged with having fraudulently obtained his or her discharge, except as provided in section 43, is subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in the custody of the military for that trial. Upon conviction of fraudulently obtaining a discharge, the person is subject to trial by court-martial for an offense under this code committed before the fraudulent discharge.

History: 1980, Act 523, Eff. Mar. 31, 1981;—Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005.

32.1005 Application by dismissed officer for trial by court-martial; convening general court-martial; jurisdiction; waiver of right to plead statute of limitations; affirming dismissal; substituting discharge authorized for administrative issuance; reappointment of officer.

Sec. 5. (1) If an officer, dismissed by order of the governor by reason of an alleged violation of this code, makes written application for trial by court-martial to the governor, setting forth, under oath, that he or she has been wrongfully dismissed, the governor within 6 months shall convene a general court-martial to try the officer on the charge on which the officer was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on the charge. The officer shall be held to have waived the right to plead any statute of limitations applicable to an offense with which the officer is charged. The court-martial, as a part of its sentence, may affirm the dismissal. However, if the court-martial acquits the accused or if the sentence, as finally approved or affirmed, does not include dismissal, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issuance.

(2) If the governor fails to convene a general court-martial within 6 months after the presentation of an application for trial under this section, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issuance.

(3) If a discharge is substituted for a dismissal under the authority of this section, the governor may reappoint the officer to the commissioned rank and precedence as in the opinion of the governor the former officer would have attained had the officer not been dismissed. The reappointment of the former officer may be made if a position vacancy is available under applicable tables of organization. The time between the dismissal and the reappointment shall be considered as service for all state purposes.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1006 State judge advocate general and assistants or legal officers; appointment; eligibility; inspections; communications; person acting in court-martial case prohibited from acting as staff judge advocate or legal officer to, or as a member of, reviewing authority or military appeals tribunal on same case.

Sec. 6. (1) The governor, on the recommendation of the adjutant general, shall appoint an officer of the state military forces as state judge advocate general. To be eligible for appointment, an officer shall be licensed to practice law in this state, and have practiced law in this state for at least 5 years, and shall be a commissioned officer of the rank of lieutenant colonel or higher in the judge advocate general's corps.

(2) The adjutant general may appoint as many state judge advocate general's assistants or legal officers as the adjutant general considers necessary. To be eligible for appointment, the person shall be licensed to practice law in this state and otherwise meet the eligibility requirements of the judge advocate general's corps.

(3) The state judge advocate general or the state judge advocate general's assistants shall make frequent inspections in the field in the supervision of the administration of military justice.

(4) Each convening authority shall communicate directly with its staff judge advocate or legal officer in matters relating to the administration of military justice. The staff judge advocate or legal officer of a command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the state judge advocate general.

(5) A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in a court-martial case shall not act later as staff judge advocate or legal officer to a reviewing authority or to the military appeals tribunal or be a member of a reviewing authority or a member of the military appeals tribunal on the same case.

History: 1980, Act 523, Eff. Mar. 31, 1981.